

APPORTIONMENT SET ASIDE

AN IMPORTANT OPINION BY JUDGE
HERRICK AND PUTNAM.

JUDICIAL INTERPRETATION OF THE NEW CONSTITUTION'S ANTI-GERRYMANDERING PROVISIONS—STRICT CONSTRUCTION OF THE LAW NULLIFIES A DIVI-

COUNTY.

[FROM THE REGULAR CORRESPONDENT OF THE TRIBUNE.]

Albany, Dec. 8.—The apportionment of the Assembly districts of St. Lawrence County has been set aside by the General Term of the Supreme Court of this, the Third District, Judge Herriek and Putnam giving the decision, and

to-day Judge Herrick gave out his important opinion in the case, which, if sustained by the Court of Appeals, is likely to be the law of the State in regard to apportionment until the Constitution itself is revised.

INTERPRETING THE NEW CONSTITUTION.

The opinion of Judge Herrick is of special importance because it interprets the new Constitution, and it attempts to stop legislative gerrymandering. Judges Herrick and Putnam construe the commands of the Constitution in the strictest manner. They overthrow the apportionment of St. Lawrence County because, in their judgments, its two Assembly districts could have been more evenly divided on the basis of population. St. Lawrence County has two Assembly districts, the boundaries of which were defined by the Board of Supervisors of the county in June. Both of the districts are largely Republican in their proclivities; that is the question of their political character did not enter into the dispute over the apportionment.

The Ist Assembly District, by the action of the Board of Supervisors, was made to include towns containing 40,682 population, while the IInd Assembly District was composed of towns having a population of 29,366. The difference of population is thus 716. At first sight, when one considers the wide disparity in population of many Assembly districts under the old apportionment of the Legislature, this seems a small difference, but there were eminent citizens of St. Lawrence County who pointed out that a reapportionment could have been made that would have created Assembly districts far more equal in population.

COULD BE MORE EQUALLY DIVIDED.

Judge Herrick, in his opinion granting a reapportionment, thus summed up the case of those who asked for another division of the districts:

The relator applied for an order to compel the Board of Supervisors to make another and different division of the county, claiming that the division already made is unconstitutional, that the county can be more equally divided, and that that portion of the constitution which says: "Towns or blocks, which, from their location, may be included in either of two districts, shall be so placed as to make each of the districts more nearly equal in number of inhabitants, excluding aliens," has been disregarded, and that the division of the county into districts is

To illustrate, the towns of Madrid and Hermosillo are upon the dividing line between the districts. Madrid is in the 1st District, and Hermosillo in the 1st; Madrid has a population of 1,752 and Hermosillo of 1,666. If Madrid is placed in the 1st District and Hermosillo in the 1st, it will give a population for the 1st District of 46,296, and for the 1st of 46,232, a difference of 64.

terence of 14,000. The towns of Oswegatchie, Morrisstown, Canton, Hammonds, Macomb, De Puyster, De Kalb, Canton, Hermon, Gouverneur, Fowler, Edwards, Russell and Rose, and the 11th District of the remaining towns in the county, the population of which would be 48,438, and the 11th District 49,333, making a difference in population of 89. An examination of the map of St. Lawrence County will show that either of the districts so made up would be of contiguous territory, and as compact as the division made by the Board of Supervisors, which is not

I have given these two simply as illustrations. With the table of its population, and by an inspection of the map of St. Lawrence County, it will be seen that a variety of others can be made, by which contiguity and compactness of territory will be obtained, and a less difference of population between the districts than under the present division.

In and of itself, the manner in which the case of *Bar* is decided is perhaps of no particular importance, but, being one of the first cases decided by the new constitution, it has a great influence on the

apportionment and the importance that it be decided upon correct principles. The case is a peculiarly happy one for a demonstration of the proper principle to be applied in cases of apportionment under the new Constitution, because it is absolutely of no political or perhaps I should say, of no party consequence. How St. Lawrence is represented in the House of Representatives will largely preponderate in both districts, no matter how they are made up.

STRICT CONSTRUCTION NECESSARY.

Judge Herrick then argues that the new Constitution imposes on the courts the duty of deciding upon questions of legislative apportionment with far more strictness than before its adoption in 1894. He points out that new provisions have been added to the Constitution which greatly limit the lines of action of

Boards of Supervisors when they come to settle upon the boundaries of Legislative districts. Boards of Supervisors under the old Constitution had great discretion in the matter. The courts had even refused to set aside a division of a county into Assembly districts where the differences between the different districts in a county were up-

ward of 6,000. The Constitutional Convention of 1894, however, as an examination of its debates revealed, resolved to put a stop to the abuse of their powers by the Boards of Supervisors, and to prevent Legislative gerrymandering. The new Constitution framed by it, Judge Herriek declares, "shows an evident intention to reduce the discretion vested in the Legislature, and in the Boards of Supervisors, and in the Boards of County Officers, and in the State Senate, and Assembly."

Continuing this line of argument, Judge He

It will be noted that nearly all the provisions of those sections of the Constitution that differ from the provisions of the old "Constitution are for the purpose of compelling equality of representation and to make the Assembly districts as nearly equal as possible in the number of inhabitants. Undoubtedly other Constitutions it had been found that the simple requirement to divide into districts "as nearly equal as possible in number of inhabitants" would be permitted to pass under that name by ignoring such

territory to be divided.

To prevent that there have been incorporated in the Constitutions of this and other States the words "of contiguous and convenient territory," or other words of like import. Under that districts were formed in which, while the population was nearly equally divided, yet it was grouped in such a way that, while the territory was contiguous and more or less compact, it was also convenient to the people to be said to be convenient, the party in the minority

In the locality divided had an equal or greater representation than the majority, or the localities containing the majority of one party were placed in a single district as is illustrated by the following: "Shelby district," so called of Mississippi, district extending for 300 miles or more along the Mississippi River, and extending back a distance only twenty miles. The territory of the district was contiguous, and it could be said to be convenient, because the river afforded a natural ready means of access from one part of the district to another.

to the other, and afforded a convenient means of communication between the inhabitants of the different parts of the district; but at the same time accomplished the placing together of the great body of those of one political faith in a single district when, if divided up and thrown into different congressional districts of the State, their number being thus distributed, would have produced districts more evenly divided politically between the great political parties. By this means a political party could be enabled to secure representation in

COMPACT AS WELL AS CONVENIENT.
The lawyer who defended the action of the Board of Supervisors of St. Lawrence County

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